



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2019-0083; FRL-10007-78-Region 7]

Air Plan Approval; Nebraska; Infrastructure SIP Requirements for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a State Implementation Plan (SIP) submission from the State of Nebraska addressing the applicable requirements of the Clean Air Act (CAA) section 110 for the 2015 Ozone (O₃) National Ambient Air Quality Standards (NAAQS). Whenever the EPA promulgates a new or revised NAAQS, CAA section 110 requires that each State adopt and submit a SIP submission to establish that the State's SIP meets infrastructure requirements for the implementation, maintenance, and enforcement of each such new or revised NAAQS. These SIP submissions are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2019-0083. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7214; email address kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. Background

On May 9, 2019, the EPA proposed to approve Nebraska's infrastructure SIP submission for the 2015 O₃ NAAQS in the *Federal Register*. 84 FR 20318 (May 9, 2019). The EPA solicited comments on the proposed approval of the infrastructure SIP submission and received one set of comments that is addressed in this document.

II. What is the EPA Addressing in this Document?

The EPA is approving the infrastructure SIP submission received from the State of Nebraska on September 24, 2018. Specifically, the EPA is approving the following infrastructure elements of section 110(a)(2): (A) through (C) (the permitting portion relevant to Part C), (D)(i)(I)- prongs 1 and 2, (D)(i)(II)- prong 3, (D)(ii), (E) through (H), and (J) through (M).

A Technical Support Document (TSD) in the docket provides additional details of this action, including an analysis of how the infrastructure SIP submission meets the applicable 110(a)(1) and (2) requirements for infrastructure SIPs. The EPA plans to

take separate action on the infrastructure elements under section 110(a)(2)(D)(i)(II) - prong 4. The EPA is not addressing section 110(a)(2)(I)- Nonattainment Area Plan or Plan Revisions under Part D, as it is the EPA's interpretation of the CAA that these elements do not need to be addressed in the context of an infrastructure SIP submission.

III. Has the State Met the Requirements for Approval of the Infrastructure SIP Submission?

The State met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The EPA determined that the submission satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided a public comment period for this SIP revision from August 7, 2018 to September 7, 2018, and at the same time, offered an opportunity for a public hearing. The State received no comments and no requests for a public hearing. In addition, as explained in more detail in the TSD, the infrastructure SIP submission meets the substantive requirements of the CAA for SIP submissions, including section 110 and implementing regulations.

IV. What is the EPA's Response to Comments?

The public comment period on the EPA's proposed rule opened May 9, 2019, the date of its publication in the *Federal Register* and closed on June 10, 2019. During this period, the EPA

received one comment which consisted of several observations as summarized below.

Comment 1: The EPA states in the TSD that Nebraska's minor source new source review (NSR) program does not meet the requirements of CAA section 110(a)(2)(C) and therefore the EPA must make the State correct the deficiency or make a finding under CAA section 110(k).

Response 1: The EPA's review of a State's infrastructure SIP submission focuses on assuring that the State's SIP meets basic structural requirements. Section 110(a)(2)(C) includes, inter alia, the requirement that States have a program to regulate minor new sources. The EPA evaluates whether the State has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. As discussed in the TSD, the EPA approved Nebraska's minor NSR program into the SIP in 1972 and 1995. See 37 FR 10842 (May 31, 1972) and 60 FR 372 (January 4, 1995).

Notwithstanding the EPA statement from the TSD referenced by the commenter, the EPA does not currently see a deficiency in the Nebraska minor NSR program that warrants a disapproval of the infrastructure SIP submission with respect to section 110(a)(2)(C) or a finding under section 110(k) of the Act. In the TSD, the EPA stated that that Nebraska's minor NSR program adequately regulates construction and modification of stationary

sources to protect the 2015 O₃ NAAQS. While the EPA also said that Nebraska's minor NSR program "likely does not meet" all the requirements found in the EPA's regulations implementing that provision, this was not intended as a definitive determination that Nebraska's program did not in fact meet all requirements of the implementing regulations of 40 CFR 51.160 through 51.164. This statement was made in error and was not the result of a comprehensive review of Nebraska's minor source NSR program, and the EPA did not identify a specific deficiency in Nebraska's minor source NSR program. The commenter does not identify a specific deficiency with the Nebraska regulations or any intervening change in the EPA regulations that Nebraska has failed to address with respect to its minor NSR program.

Nebraska has an approved minor NSR program that addresses the relevant pollutants. After further review of this issue, the EPA reaffirms its position that the State's minor source NSR program adequately regulates the construction and modification of stationary sources to protect the 2015 O₃ NAAQS. Because the EPA has determined that Nebraska's minor NSR program is not deficient, the EPA is not disapproving the SIP submission with respect to CAA section 110(a)(2)(C) and is not compelled to issue a finding under CAA section 110(k).

Comment 2: Nebraska failed to assure that the appropriate modeling is being performed through the State's PSD and NSR

permitting programs, as chapter 19, section 001 of Nebraska's regulations does not appear to allow for incorporation by reference on an ongoing basis. The EPA must demonstrate that Nebraska is able to incorporate 40 CFR part 51, appendix W modeling guidelines on an ongoing basis. In addition, for the reasons listed above, the State fails to meet CAA 110(a)(2)(k).

Response 2: Appendix W was revised in 2017, and the EPA required States to integrate the revisions to 40 CFR part 51, appendix W, into regulatory processes and require applicants to follow the revisions by no later than January 17, 2018. 82 FR 5182 (January 17, 2017).

The EPA has reviewed the title 129, chapter 19, section 001 of the Nebraska Administrative Code and has determined that this State rule neither applies to nor limits the incorporation by reference of 40 CFR part 51, appendix W, as it does not pertain to appendix W. As stated in the TSD, Nebraska's authority to require or perform air quality modeling for PSD construction permitting is in the SIP-approved State regulations at title 129, chapter 19, section 019, which requires air quality modeling to be based on the applicable models, data bases, and other requirements specified in 40 CFR part 51, appendix W (Guideline on Air Quality Models). Title 129, chapter 19, section 019 does not contain an incorporation by reference date.

To the extent the commenter is concerned that title 129, chapter 019, section 019.01 adopts an older version of appendix W and that the State therefore lacks the requisite authority to use the 2017 revision to appendix W in PSD modeling, title 129, chapter 19, section 019.02 provides a process for modification or substitution with another model where an air quality model specified in 40 CFR part 51, appendix W, is inappropriate, and includes provisions for public comment concerning the modified or substituted model. The EPA interprets this provision to allow for Nebraska and its sources to use updated appendix W models reflected in the most recent version of appendix W even if the undated reference in appendix W in title 129, chapter 19, section 019.02 could be interpreted to adopt a previous version of appendix W. These provisions are thus adequate to meet PSD and NSR requirements under section 110(a)(2)(C) and contribute to satisfying section 110(a)(2)(K).

With respect to CAA section 110(a)(2)(K) more generally, the EPA explained in its TSD that Neb. Rev. Stat. section 81-1504(5) provides Nebraska with the authority to encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air pollution and its causes and effects. This statute is interpreted by the EPA to give Nebraska broad authority to conduct air quality modeling to predict the effect on ambient air quality of any emission of any air

pollutant for which a NAAQS has been promulgated. Nebraska's September 24, 2018 infrastructure SIP submission also references Neb. Rev. Stat. section 81-1527, which provides for public inspection of information furnished to or obtained by Nebraska related to air sources, including emissions data. Thus, considering this statutory authority and the Nebraska regulations described above, the EPA finds that Nebraska's SIP has the authority to provide air quality modelling data to the EPA upon request. For these reasons, the EPA finds that Nebraska's SIP satisfies the requirements of CAA section 110(a)(2)(K).

Comment 3: Nebraska failed to identify ammonia as a precursor to Particulate Matter (PM) in its NSR and PSD permitting program. Because of this, the State fails to meet elements C, D and J (CAA sections 110(a)(2)(C), (D), and (J)).

Response 3: The EPA interprets the commenter's reference to Particulate Matter as Particulate Matter less than 2.5 microns in diameter (PM_{2.5}) in accordance with the precursor language in the definition of "regulated NSR pollutant" in 40 CFR 51.166(b)(49). Nebraska's PSD regulations at title 129, chapter 19, section 010 define the appropriate precursors for all NSR pollutants and mirror the EPA's definitions in 40 CFR 51.166(b)(49). In that provision, the EPA regulations define "regulated NSR pollutant" for purposes of the PSD permitting

requirements to include precursors specifically identified by the Administrator in that paragraph. The provisions indicate that sulfur dioxide is a precursor to $PM_{2.5}$, that nitrogen oxides are presumptively a precursor to $PM_{2.5}$ (unless a demonstration is made to the contrary), and that volatile organic compounds are presumptively not a precursor to $PM_{2.5}$ (unless a demonstration is made to the contrary). The provision does not identify ammonia as a precursor to $PM_{2.5}$ for purposes of the PSD permitting requirements, and thus Nebraska was not required to identify ammonia as a $PM_{2.5}$ precursor in its SIP for purposes of satisfying the requirement to have an adequate PSD permitting program under CAA section 110(a)(2)(C), (D)(i)(II), or (J).

To the extent the commenter suggests that the State's nonattainment NSR permitting program should regulate ammonia as a $PM_{2.5}$ precursor, the EPA interprets the portion of CAA section 110(a)(2)(C) that pertains to a permitting program that applies to nonattainment NSR within nonattainment areas is outside of the scope of this infrastructure SIP action. Because CAA section 110(a)(2)(C) refers to permit programs for purposes of nonattainment NSR under part D of the CAA that a State is required to submit to the EPA on a schedule that is separate from what is required for infrastructure SIP submissions, the State is not required to address nonattainment NSR requirements in the infrastructure SIP submission. In addition, as explained

in the TSD, there are currently no nonattainment areas in the State of Nebraska, and thus, Nebraska is not at this time required to have an approved nonattainment NSR program addressing PM_{2.5}.

Accordingly, the EPA finds that Nebraska's 2015 O₃ NAAQS Infrastructure SIP submission meets the requirements of CAA sections 110(a)(2)(C), (D), and (J) as it is not required to identify ammonia as a precursor to PM_{2.5} in its PSD permitting program and any purported deficiencies related to the State's nonattainment NSR permitting program are outside of the scope of this action.

Comment 4: In the TSD, the EPA discusses CAA 110(a)(2)(D)(ii) in its approval of CAA 110(a)(2)(D)(i)(I) prongs 1 and 2 and CAA 110(a)(2)(D)(i)(II) prong 3, but it is not clear if 110(a)(2)(D)(ii) is the basis for approval of those prongs.

Response 4: The TSD contains the EPA's analysis of whether the State meets the separate requirements found in CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2), and CAA section 110(a)(2)(D)(i)(II) (prong 3), as well as CAA section 110(a)(2)(D)(ii). Because the EPA did not reference CAA section 110(a)(2)(D)(ii) in its approval of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 and CAA section

110(a)(2)(D)(i)(II) prong 3, the EPA is unable to determine the commenter's concern with the EPA's approval of these elements.

Comment 5: The EPA should make periodic reviews of Nebraska's Air Quality program publicly available in order for the public to determine if Nebraska has adequate resources and personnel. The EPA should re-propose approval of the Infrastructure SIP and should clearly state whether it has found that Nebraska has adequate funding to support the State's permitting programs in accordance with CAA section 110(a)(2)(L).

Response 5: The EPA's statement that it conducts periodic reviews of Nebraska's Air Quality Program was made in the section of the TSD that contained an analysis of whether Nebraska meets the requirements of CAA section 110(a)(2)(E). The basis for the EPA's approval of Nebraska's provisions for meeting the requirements of CAA section 110(a)(2)(E) are fully articulated in the TSD, and the statement concerning periodic reviews of Nebraska's Air Quality Program was informational in nature and did not serve as a basis for approval of Nebraska's provisions that meet the requirements of CAA section 110(a)(2)(E). As discussed in the TSD, the State has adopted requirements for sources to pay fees sufficient to pay the reasonable direct and indirect costs of developing and administering the air quality operating permit program. These costs include overhead charges for personnel, equipment,

buildings and vehicles; enforcement costs; costs of emissions and ambient monitoring; and modeling analyses and demonstrations. The EPA therefore finds that Nebraska has adequate personnel, funding, and authority to carry out the state implementation plan with respect to the relevant NAAQS in accordance with CAA section 110(a)(2)(E).

Concerning the EPA's analysis of whether Nebraska has adequate infrastructure and adequate funding to address CAA section 110(a)(2)(L), the EPA addressed the adequacy of Nebraska's Title V fee program, which was approved by the EPA on October 18, 1995. See 60 FR 53872 (October 18, 1995). Nebraska included its environmental agency's 2017 Annual Report to the Legislature with its September 24, 2018 infrastructure SIP submission for the 2015 O₃ NAAQS, which is available in the docket. The Annual Report details how emission fees are established in order to provide the minimum amount to pay the direct and indirect costs of developing and administering the air quality permit program, which includes an analysis of whether the fees support administration of the program.

Because the EPA articulated its proposed finding in the TSD based on information that was available in the docket during the public comment period, the EPA disagrees with the commenter that it must re-propose approval for its finding that Nebraska has the adequate infrastructure to satisfy CAA section 110(a)(2)(L).

V. What Action is the EPA Taking?

The EPA is approving elements of the September 24, 2018, infrastructure SIP submission from the State of Nebraska, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2015 O₃ NAAQS. Specifically, the EPA is approving the following infrastructure elements of 110(a)(2): (A) through (C) (the part C permitting portion), (D)(i)(I) - (prongs 1 and 2), (D)(i)(II) (prong 3), (D)(ii), (E) through (H), and (J) through (M). As explained in the TSD, the EPA intends to act on section 110(a)(2)(D)(i)(II) - prong 4, in a subsequent rulemaking. The EPA is not addressing section 110(a)(2)(I) - Nonattainment Area Plan or Plan Revisions under part D, as it is the EPA's interpretation of the CAA that these elements do not need to be addressed in the context of an infrastructure SIP submission.

Based upon review of the State's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Nebraska's SIP, the EPA finds that Nebraska's SIP meets all applicable required elements of sections 110(a)(1) and (2) (except as otherwise noted) with respect to the 2015 O₃ NAAQS.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and

applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Reporting and recordkeeping
requirements, Sulfur oxides, Volatile organic compounds.

Dated: _____

April 3, 2020.

Edward Chu,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart CC-Nebraska

2. In §52.1420, the table in paragraph (e) is amended by adding entry "(35)" in numerical order to read as follows:

§52.1420 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(35) Sections 110 (a) (1) and (2) Infrastructure Requirements for the 2015 O ₃ NAAQS	Statewide	9/24/2018	[insert date of publication in the Federal Register], [insert Federal Register citation]	This action approves for the O ₃ NAAQS: The following CAA elements: 110(a) (1) and (2): (A) through (C), (D) (i) (I)-prongs 1 and 2, (D) (i) (II)-prong 3, (D) (ii), (E) through (H), and (J) through (M). EPA-R07-OAR-2019-0083; FRL-10007-78-Region 7.
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[FR Doc. 2020-07477 Filed: 4/16/2020 8:45 am; Publication Date: 4/17/2020]